

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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DATE: MAR 23 1983 Region 10 - Seattle, Washington

SUBJECT: Concurrence on Compliance Order for Arrcom-Rathdrum (IDD000800961)FROM: Alexandra B. Smith, Director (M/S 529) *OF*
Air & Waste Management DivisionTO: Gene Lucero, Director (WH 527)
Office of Waste Programs Enforcement

Attached is a Compliance Order pursuant to Section 3008(a) of RCRA that EPA, Region 10, would like to issue to Arrcom Incorporated, Rathdrum, ID.

The purpose of this Order is to require the clean up of spilled and/or disposed hazardous waste and compliance of an extensive list of ISS violations.

We would like to issue this order on April 4, 1983. Therefore, it would be appreciated if you could determine Headquarter's concurrence by COB, Wednesday, April 1, 1983.

Further questions can be directed to Mr. George Hofer at FTS 399-2803.

Concurrence by Regional Counsel *UG 3/21/83*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 Region 10
 1200 Sixth Avenue
 Seattle, Washington 98101

IN THE MATTER OF:)

Environmental Protection Agency)

Complainant,)

v.)

Arrcom Incorporated,)

George W. Drexler (Operator),)

Thomas Drexler (Operator),)

Warren Bingham (Owner))

Respondents.)

RCRA Docket X-

COMPLAINT AND
 COMPLIANCE ORDER

COMPLAINT

This is a civil administrative action initiated pursuant to Section 3008(a) of the Resource Conservation and Recovery Act [42 USC 6928(a)], hereinafter referred to as "the Act." The Complainant is Region 10 of the United States Environmental Protection Agency (EPA). Based on ^aan ~~an~~ confidential inspection conducted on July 20, 1982 by the EPA and the Panhandle Health District I (Idaho), Complainant has reason to believe that the above-named Respondents have violated Section 3005 of the Act (42 USC 6925) as follows:

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1. Respondents have operated a facility (IDD000800961) for the treatment, storage, and/or disposal of hazardous waste since January 1, 1980, located at 5 miles East of Sateline on Highway 53, Rathdrum, Idaho (Rural Route 3 Box 258-A6, Rathdrum, Idaho 83858). Furthermore, Respondents are transporters of hazardous waste. Hazardous waste manifests from United Paint Manufacturing Company, Washington (nine manifests from November 19, 1980 to December 3, 1981) and Anaconda Aluminum Company, Montana (one manifest dated February 26, 1981) document these activities.

clarify

2. Respondents submitted Notification of Hazardous Waste Activity (EPA Form 8700-12) which was received by EPA on August 20, 1980. This Notification satisfied 3010(a) of the Act and 40 CFR 122.21(c). This notification indicated that Respondents were a generator and also a treater, storer, and/or disposer of hazardous waste.

3 Respondents submitted a Part A permit application (EPA Form 3510-1) which was received by EPA on November 19, 1980 as required by 40 CFR 122.22. This application stated that the Respondents were a storer and treater of hazardous waste.

4 40 CFR Part 262 establishes standards for all hazardous waste generators. Respondent is a generator of hazardous waste as evidenced by the Notification of Hazardous Waste Activity.

5. 40 CFR Part 265 establishes standards for all hazardous waste treatment, storage, and disposal facilities. These standards apply until final administrative disposition of permit applications submitted by

owners and operators of facilities has been made. No such disposition has been made with respect to Respondent's facility. Thus, the standards of 40 CFR Part 265 apply thereto.

6. Respondents submitted a Part A permit application without having a proper signatory for the permit as required by 40 CFR 122.4(b). W.A. Pickett, an employee for George W. Drexler (operator), signed the Owner Certification of the application. Warren Bingham (owner) has stated to EPA on July 9, 1983 that he had not authorized his name to be signed on the Part A application.

7. Complainant, in a letter dated February 9, 1982, requested that Respondent submit a corrected Part A permit application or submit a closure plan. Respondents have subsequently stopped operation but have neither resubmitted the Part A application nor submitted a closure plan. Since hazardous waste remains on site, the facility has not been properly closed as required by 40 CFR 265.111.

8. Respondents spilled and/or disposed hazardous waste or hazardous waste constituents into the soil surrounding the shaker building of the facility. Samples of contaminated soil and of spilled material taken during the inspection and subsequently analyzed revealed the following hazardous wastes constituents: 1,1,1-trichloroethene; ethylbenzene; methylene chloride; and toluene. Spent ethylbenzene and toluene were reported on the Respondents' Part A permit application (EPA Hazardous Waste Codes F003 and F005 respectively).

9. Respondents further failed to comply with the requirements of a hazardous waste management facility in that they failed:

Facility is not in operation

- (a) to prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock as required by 40 CFR 265.14. The fence securing the site did not completely surround the active portion of the facility.
- (b) to inspect the facility for discharges of hazardous wastes according to 40 CFR 265.15(a).
- (c) to develop written inspection schedule for inspection as required by 40 CFR 265.15(b)(1).
- (d) to develop a written training schedule and maintain records as required by 40 CFR 265.16.
- (e) to maintain and operate the facility to minimize the possibility of any release of hazardous waste as required by 40 CFR 265.31.
- (f) to have an external communication device capable of summoning emergency assistance and to maintain fire control equipment as required by 40 CFR 265.32.
- (g) to make contingency arrangements with local authorities as required by 40 CFR 265.37.
- (h) to develop a contingency plan and emergency procedures as required by 40 CFR 265.51(a).
- (i) to maintain manifests and operating records required by 40 CFR 265.71 and 40 CFR 265.73 respectively.
- (j) to develop a closure plan as required by 40 CFR 265 Subpart G.
- (k) to submit financial assurance and liability documents as required by 40 CFR 265 Subpart H.

PROPOSED CIVIL PENALTY

In view of the above-cited violations, Complainant proposes to assess a penalty of NINETY-FIVE THOUSAND NINE HUNDRED TWENTY-FIVE DOLLARS (\$95,925), computed in accordance with EPA Guidelines for penalties assessed under the Act, as follows:

<u>Violation</u>	<u>Proposed Penalty</u>
40 CFR 122.4(b)	\$ 22,500
40 CFR 265.14	\$ 2,550
40 CFR 265.15(a)	\$ 4,500
40 CFR 265.15(b)(1)	\$ 1,975
40 CFR 265.16	\$ 800
40 CFR 265.31	\$ 22,500
40 CFR 265.32	\$ 9,900
40 CFR 265.37	\$ 800
40 CFR 265.51(a)	\$ 1,975
40 CFR 265.71(a)(5)	\$ 1,975
40 CFR 265.73	\$ 1,975
40 CFR 265.111	\$ 22,500
40 CFR 265.112	\$ 1,975
Total	\$ 95,925

COMPLIANCE ORDER

Based on the foregoing and pursuant to Section 3008 of the Act, it is hereby ordered that the Respondents take the following corrective actions within the time periods specified:

1. Respondent shall immediately upon receipt of this Order, begin to clean up of the hazardous waste and hazardous waste constituents that have spilled on the ground and/or absorbed into ground. This cleanup shall be accomplished as expeditiously as possible but in no event later than thirty (30) days from the receipt of this Order. The level of cleanup must restore any contaminated soil to background level. →

2. Respondents shall within 180 days of receipt of this Order submit a Part B permit application in accordance with 40 CFR 122.22(a)(4). This Part B permit application shall address the requirements listed in 40 CFR 122.25. This Part B permit application shall be submitted to Mr. George Hofer at Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101-3188. Failure to submit a complete application will result in further enforcement action and may result in the termination of Interim Status for this facility in accordance to 40 CFR 122.22(a)(5).

3. Respondents shall comply with either paragraphs 4 and 5 or paragraphs 6 thru 9 (inclusive). Respondents shall state in a letter Mr. George Hofer at the above address which option is chosen within fifteen days of receipt of this Order.

4. If Respondents elect to permanently cease operation as a hazardous waste facility, Respondents shall submit a written statement to Mr.

George Hofer at the above address which contains the following: a request for EPA to deny Respondents' Part B permit application; a waiver of the 180 day Part B preparation period allowed for in 40 CFR 122.22; and a declaration that Respondents will cease operation immediately and will close the facility within 180 days.

edit to case
5. Respondents shall submit an appropriate closure plan in accordance with 40 CFR 265 Subpart G within thirty (30) days of receipt of this Order. Closure of this facility shall commence upon submission and Complainant's approval of the plan and shall be accomplished as expeditiously as possible but in no event later than 180 days from the receipt of this Order. The Closure Plan shall be submitted to George Hofer at the above address.

continue in operation
6. Respondents shall immediately upon receipt of this Order, initiate the following activities:

- 8a* (a) Respondents must obtain the proper signatures on the Part A permit application as required by 40 CFR 122.4(b) and submit the application to Mr. George Hofer at the address in paragraph 3, above.
- (b) Inspect the facility for discharge of hazardous waste and for deterioration of tanks and equipment as required by 40 CFR 265.15(a) and (c) and 40 CFR 265.194.
- (c) Maintain personnel training records as required by 40 CFR 265.16.
- (d) Maintain manifest copies as required by 40 CFR 265.71.
- (e) Maintain operating records as required by 40 CFR 265.73.

7. Respondents shall immediately on the receipt of this Order institute the following activities and complete these activities as

expeditiously as practicable but in no event later than thirty (30) days after the receipt of this Order:

- (a) Remedy any deterioration of tanks and equipment revealed through inspection pursuant to 40 CFR 265.15(c).
- (b) Install required communication and emergency equipment as required by 40 CFR 265.32.
- (c) Make contingency arrangements with local authorities as required by 40 CFR 265.37.
- (d) Install needed security system as required by 40 CFR 265.14.

8. Respondents shall submit within thirty (30) days of the receipt of this Order the following to Mr. George Hofer at the above address:

- (a) -
 - (a) Inspection Plan to satisfy 40 CFR 265.15(b)(1)
 - (b) Training Plan to satisfy 40 CFR 265.16
 - (c) Contingency Plan to satisfy 40 CFR 265 Subpart D
 - (d) Closure Plan to satisfy 40 CFR 265 Subpart G.
 - (e) Financial assurance and liability documents to satisfy 40 CFR 265 Subpart H.

OPPORTUNITY TO REQUEST A HEARING

A copy of the "Consolidated Rules of Practice" governing these penalty proceedings is attached. Under those rules Respondent has the right to request a hearing (a) to contest any material fact set forth in

the Complaint, or (b) to contest the appropriateness of the proposed penalty, or (c) to contend that Respondent is entitled to judgment as a matter of law.

To avoid being found in default and having the proposed civil penalty assessed and the Compliance Order become final without further proceedings, Respondent must file a written response to the Complainant. Respondent's written response may include a request for a hearing, if desired. The response (if any) must be addressed to the Region 10 Hearing Clerk, Office of Regional Counsel, Environmental Protection Agency, M/S 613, 1200 Sixth Avenue, Seattle, Washington 98101-3138 and sent within thirty (30) days of Respondent's receipt of this Complaint and Compliance Order.

Respondent's response should clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint about which Respondent has any knowledge. The response should contain: (1) a definite statement of the facts which constitute the grounds of defense, and (2) a concise statement of the facts Respondent intends to place at issue in the hearing if requested.

If Respondent fails to file a written answer within 30 days of receipt of this Complaint and Compliance Order, such failure constitutes an admission of all the facts alleged in the Complaint and a waiver of Respondent's right to a hearing. A final order upon default will thereafter be issued by the Regional Administrator and filed with the Region 10 Hearing Clerk.

Any hearing requested by Respondent will likely be held at the Region 10 office of EPA in Seattle. Hearings held will be conducted in accordance with the attached Consolidated Rules of Practice (40 CFR Part 22; 45 FR 24363).

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act. At an informal conference with a representative of the Complainant, Respondent may comment on the charges and provide whatever additional information Respondent feels is relevant to the disposition of this matter, including any actions Respondent has taken to correct the violations and any other special circumstances Respondent cares to raise.

Respondent's request for an informal conference and other questions that Respondent may have regarding this Complaint should be directed, in writing, to Mr. Kenneth D. Feigner, Environmental Protection Agency, Region 10, M/S 533, 1200 Sixth Avenue, Seattle, Washington 98101-3188, or by telephone to Mr. Feigner at (206) 442-2782.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted. The informal settlement conference procedure may be pursued simultaneously with the adjudicatory hearing procedure. Any settlement which may be reached as a result of such conference will be embodied in a written Agreed Final Compliance Order to be issued by the Regional Administrator of EPA, Region 10, and

signed by Respondent. Respondent's signing of such Agreed Final Compliance Order would constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(a)(3) of the Act, a violator failing to take corrective action within the time specified in a Final Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued noncompliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONCERENCE

Instead of filing an answer requesting a hearing or requesting an informal settlement conference, Respondent may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending to the Regional Hearing Clerk, Environmental Protection Agency, Region 10, M/S 613, 1200 Sixth Avenue, Seattle, Washington, 98101-3188, a cashier's check or certified check payable to "Treasurer, United States of America" in the amount specified in the "Proposed Civil Penalty" section of this Complaint and Compliance Order.

DATED this _____ day of _____ 1983.

John R. Spencer
Regional Administrator

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